CHE ANI ITAM

v.

PUBLIC PROSECUTOR

FEDERAL COURT, KUALA LUMPUR
RAJA AZLAN SHAH LP
HASHIM YEOP SANI FJ
EUSOFFE ABDOOLCADER FJ
[CRIMINAL REFERENCE NO. 4 OF 1983]
20 DECEMBER 1983

CONSTITUTIONAL LAW: *Constitutional questions for determination of Court - Life imprisonment for the duration of natural life - Whether unconstitutional - Federal Constitution, art. 5(1), 8(1) - Firearms (Increased Penalties) Act 1971, s. 4.*

The appellant was convicted for an offence under s. 4 of the Firearms (Increased Penalties) Act 1971 and sentenced to imprisonment for life with six strokes of the rotan by the Sessions Court at Kangar. On appeal to the High Court the learned Judge stayed the proceedings and certified the following constitutional question for the determination of the Federal Court:

Whether or not the sentence of life imprisonment for the duration of natural life is unconstitutional and violates Articles 5(1), 8(1) of the Federal Constitution.

Held:
The sentence prescribed under s. 4 of the Firearms (Increased Penalties) Act 1971 is constitutional and valid.

[Order accordingly.]

Cases referred to:
Maneka Gandhi v. Union of India [1978] AIR SC 597
Karam Singh v. Menteri Hal Ehwal Dalam Negeri, Malaysia [1969] 2 MLJ 129
Ong Ah Chuan v. Public Prosecutor [1981] AC 648
Hinds & Ors. v. The Queen [1977] AC 195
Maru Ram v. Union of India [1980] AIR SC 2147
Carmona v. Ward [1979] 99 S Ct 874
Rummel v. Estelle [1980] 100 S Ct 1133
Public Prosecutor v. Lau Kee Hoo [1983] 1 CLJ (Rep) 336

Legislation referred to:
Courts of Judicature Act 1964, s. 48(1)
Criminal Justice Ordinance 1953, s. 3
Federal Constitution, arts. 5(1), 8(1), 13
Firearms (Increased Penalties) Act 1971, ss. 2(1), 4
Constitution of India [Ind], arts. 14, 21
Penal Code, s. 130A

For the appellant - Karpal Singh; M/s. Karpal Singh & Co.
For the respondent - Mokhtar Abdullah, DPP (Chuah Ming Hung, DPP with him)

JUDGMENT

Raja Azlan Shah LP:

The appellant was convicted in the Sessions Court at Kangar for an offence under s. 4 of the Firearms (Increased Penalties) Act 1971 ('the 1971 Act') and sentenced to imprisonment for life with six strokes of the rotan. He appealed to the High Court, and right at the inception on an application by the appellant the learned Judge stayed the proceedings under the provisions of s. 48(1) of the Courts of Judicature Act 1964 and certified the following constitutional question for our determination:

> Whether or not the sentence of life imprisonment for the duration of natural life as provided under s. 4 of the 1971 Act read with the s. 2 definition of life imprisonment as amended by Act A256/1974 is unconstitutional and violates art. 5(1) and art. 8(1) of the Federal Constitution.

For ease of reference, art. 5(1) of the Federal Constitution provides that no person shall be deprived of his life or personal liberty save in accordance with law, and art. 8(1) prescribes that all persons are equal before the law and entitled to the equal protection of the law.

Mr. Karpal Singh for the appellant in his argument that the sentence of imprisonment for life as defined in s. 2(1) of the 1971 Act to mean imprisonment for the duration of the natural life of the person sentenced is a savage sentence relies heavily on the decision of the Supreme Court of India in *Maneka Gandhi v. Union of India* [1978] AIR SC 597 which held that a statute which merely prescribes some kind of procedure for depriving a person of his life or personal liberty cannot ever meet the requirements of art. 21 of the Indian Constitution, and that the procedure prescribed by law has to be fair, just and reasonable, not fanciful, oppressive or arbitrary, with Bhagwati J, observing that the concept of reasonableness must be projected in the procedure contemplated by art. 21, having regard to the impact of art. 14 [the equivalent of our art. 8(1)] on that article.

We do not think the argument advanced by Mr. Karpal Singh can be sustained. We would at the outset observe that a distinction was drawn in *Karam Singh v. Menteri Hal Ehwal Dalam Negeri, Malaysia* [1969] 2 MLJ 129 (at page 149) between art. 21 of the Indian Constitution and art. 5(1) of our Constitution in that the former provides that 'no person shall be deprived of his life or personal liberty except according to procedure established by law' in contrast to the latter which makes no mention of the word 'procedure'. In any event notwithstanding the provisions of s. 3 of the Criminal Justice Ordinance 1953 which provide that a sentence of imprisonment for life shall be deemed for all purposes to be a sentence of imprisonment for twenty years and the amendments made to the Penal Code to substitute provisions for imprisonment for life with imprisonment for a term which may extend to twenty years, there are specific statutory exceptions however categorically providing for imprisonment for life to mean imprisonment for the duration of natural life in certain specified offences, such as, for example, s. 130A of Penal Code in relation to offences against the State under Chapter VI of the Penal Code, and the Arms Act 1960.

It is now firmly established that 'law' in the context of such constitutional provisions as Articles 5, 8 and 13 of the Constitution refers to a system of law which incorporates those fundamental rules of natural justice that had formed part and parcel of the common law of England that was in operation at the commencement of the Constitution *(Ong Ah Chuan v. Public Prosecutor* [1981] AC 648 (at page 670)). We can see nothing in the statutory provision sought to be impugned before us to infringe the proposition enunciated. There is nothing

arbitrary, fanciful or oppressive in the legislatively defined sentence for the specific offence in question committed under the 1971 Act. Lord Diplock said in *Hinds & Ors. v. The Queen* [1977] AC 195 (at page 221):

> In the exercise of its legislative power, Parliament may, if it thinks fit, prescribe a fixed punishment to be inflicted upon the offenders found guilty of the defined offence ... .

The Supreme Court of India in *Maru Ram v. Union of India* [1980] AIR SC 2147 upheld the validity of an Act which required offenders awarded a life sentence for an offence for which death was a permissible penalty, and offenders whose death sentence was commuted to a term of life imprisonment, to undergo a minimum detention of fourteen years. In *Carmona v. Ward* [1979] 99 S Ct 874 the Supreme Court of the United States of America denied a writ of *certiorari* to challenge the constitutionality of a mandatory life sentence imposed under a New York Law for the possession of an ounce of a substance containing cocaine. In *Rummel v. Estelle* [1980] 100 S Ct 1133 the Supreme Court of America by a majority decision upheld a statute which authorised a mandatory sentence of life imprisonment on a third conviction of a felony less than a capital felony. The principle underlying these decisions apply equally in the case before us in relation to the mandatory nature of the maximum term of the sentence imposable by a specific statutory definition for a specified offence. The legislature in doing so no doubt had in mind the object and purpose to be achieved by such a provision and it cannot accordingly be arbitrary in any sense of the word.

On the contention that the specified term for the duration of the natural life of the person sentenced violates the equality provisions in art. 8(1) of the Constitution, we would refer to the speech of Lord Diplock in *Ong Ah Chuan* (ante) (at page 674) where he says that the Singapore constitutional provision with regard to equality [which textually accords *totidem verbis* with our art. 8(1)] is not concerned with equal punitive treatment for equal moral blameworthiness but is concerned with equal punitive treatment for similar legal guilt. In matters relating to equal protection the basis of approach is the identification of legislative purpose and a reasonable classification is one that includes all persons who are similarly placed with respect to the purpose of the law. We would refer in elaboration and support to the decision of this Court in *Public Prosecutor v. Lau Kee Hoo* [1983] 1 CLJ (Rep) 336 and also to *Maru Ram* referred to earlier.

We accordingly at the conclusion of argument before us answered the question posed for our consideration in the negative. The sentence prescribed in the 1971 Act is constitutional and valid, and we might perhaps just add that the existence of executive powers of clemency could well militate against the rigours of the sentence sought to be impugned by consideration on a case to case basis.

Also found at [1984] 1 CLJ 72